

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 23, 2000

IN RE:

**PETITION OF UNITED CITIES GAS FOR APPROVAL
OF VARIOUS FRANCHISE AGREEMENTS**

DOCKET NO. 00-00562

**ORDER GRANTING INTERVENTION
BY CONSUMER ADVOCATE DIVISION**

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on August 29, 2000, upon the Petition for Information, or Alternatively to Intervene filed by the Consumer Advocate Division of the Office of the Attorney General (the "Consumer Advocate") in this proceeding.

United Cities' Petition

On June 30, 2000, United Cities Gas Company ("United Cities") filed a Petition for Approval of Various Franchise Agreements ("United Cities' Petition"). United Cities requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107, of franchise agreements contained in ordinances and resolutions passed by three municipalities and one county. As stated in United Cities' Petition, the pertinent resolution or ordinance and the terms of each franchise agreement are as follows:

- a) City of Kingsport ordinance effective April 5, 2000 for a term of 20 years;
- b) City of Bristol ordinance effective November 8, 1999 for a term of 30 years;
- c) City of Morristown ordinance effective January 4, 2000 for a term of 18 years;
- d) Maury County resolution effective October 18, 1999 for a term of 30 years.¹

¹ United Cities' Petition, June 30, 2000, pp. 1-2.

The Consumer Advocate's Petition

The Consumer Advocate filed its Petition on August 15, 2000. The Consumer Advocate challenges certain provisions regarding franchise fees in the Kingsport, Bristol, and Morristown franchise agreements. The Consumer Advocate objects to a provision in the Kingsport agreement which, the Consumer Advocate states, purports to impose non pro rata billing of United Cities' customers for franchise fees, in violation of Tenn. Code Ann. § 65-4-105. The Consumer Advocate objects to the Bristol and Morristown franchise agreements, alleging that they require United Cities to pay franchise fees to the cities based on gross revenues, which, the Consumer Advocate alleges, violates a recent holding of the Tennessee Court of Appeals.²

The Consumer Advocate requests, pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(B),³ that the Authority obtain information from United Cities regarding the actual cost to Kingsport, Bristol, and Morristown of the use of their rights of way and facilities by United Cities, and further that the Authority suspend a hearing on the Kingsport, Bristol, and Morristown agreements until United Cities provides information sought by the Consumer Advocate in its Petition. The Consumer Advocate seeks intervention in this matter and requests denial of the Kingsport, Bristol, and Morristown franchise agreements. At the August

² In *City of Chattanooga v. BellSouth Telecommunications, Inc.*, No. E1999-01573-COA-R3-CV, 2000 WL 122199, at *3 (Tenn. App. Jan. 26, 2000), the Court held that a franchise fee imposed upon a utility by a municipality of five percent (5%) of the utility's annual gross revenues was unreasonable as an improper tax because the fee was "measured by the provider's earnings and not [by] the burdens assumed by the city in regulating the particular provider."

³ That section provides, in pertinent part, that:

If the consumer advocate division concludes that it is without sufficient information to initiate a proceeding, it may petition the authority, after notice to the affected utility, to obtain information from the utility. The petition shall state with particularity the information sought and the type of proceeding that may be initiated if the information is obtained.

29, 2000 Authority Conference, the counsel for the Consumer Advocate informed the Directors that the Consumer Advocate does not object to or seek intervention as to the Maury County franchise agreement.⁴

Criteria for Permitting Interventions

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions for intervention:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

In its Petition, the Consumer Advocate raises significant issues regarding whether the Kingsport, Bristol, and Morristown franchise agreements comply with the *City of Chattanooga* decision and Tenn. Code Ann. § 65-4-105. At the August 29, 2000 Authority Conference, the Directors applied the legal standard for intervention, codified at Tenn. Code Ann. § 4-5-310, and found that the Consumer Advocate's Petition for Intervention was timely and properly served, that it substantiated that legal interests of the Intervenor may be determined in this proceeding, and that it demonstrated that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by permitting the Consumer Advocate to intervene in this matter. Accordingly, the Directors voted unanimously to convene a contested case in this matter and to allow the Consumer Advocate to intervene in this matter, pursuant to

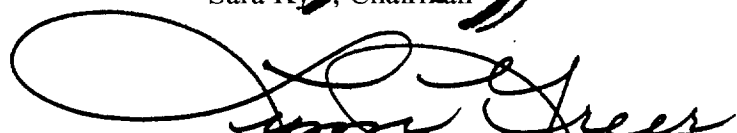
⁴ Transcript of Authority Conference, August 29, 2000, pp. 61-62.

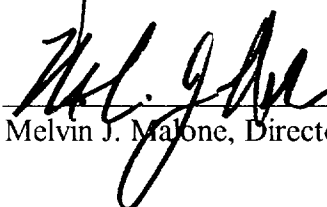
Tenn. Code Ann. § 4-5-310, as to the Kingsport, Bristol, and Morristown franchise agreements. Further, the Directors voted unanimously to appoint General Counsel or his designee as Pre-Hearing Officer for the purpose of establishing a procedural schedule and otherwise preparing this matter for hearing.

IT IS THEREFORE ORDERED THAT:

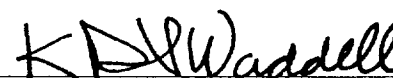
1. A contested case is hereby convened for the purpose of acting on United Cities' Petition;
2. The General Counsel or his designee is appointed Pre-Hearing Officer in this matter for the purpose of hearing preliminary matters and establishing a procedural schedule to completion;
3. The Petition of the Consumer Advocate Division to intervene in this matter is granted as to the franchise agreements for Kingsport, Bristol, and Morristown; and
4. Any Party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days of the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary